

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMAZON.COM INC, *et al.*,

Plaintiffs,

v.

NELSON KAMWARO NYUTU, *et al.*,

Defendants.

Case No. C23-1681-JNW-MLP

ORDER

I. INTRODUCTION

This matter is before the Court on Plaintiffs Amazon.com, Inc., Amazon.com Services LLC, Quincy Bioscience, LLC, and Prevagen, Inc.’s (“Plaintiffs”) *Ex Parte* Motion for Expedited Discovery (“Plaintiffs’ Motion”). (Pls.’ Mot. (dkt. # 10).) No defendant has yet appeared in this matter. Having reviewed Plaintiffs’ briefing, the governing law, and the balance of the record, the Court GRANTS Plaintiffs’ Motion (dkt. # 10).

II. BACKGROUND

On November 2, 2023, Plaintiffs filed a complaint against Nelson Kamwaro Nyutu; Mr. Nyutu’s two companies, A2X LLC and A2X Ltd.; James Joshua Kimani; Moses Kamau Mwangi; Ezekiel Davids Njuguna; Peter Jerry Johnson; James Mwasi Mwadele; Alex Lemiso

1 Naimodu; David Magu Kibe (collectively, “Defendants”); and Does 1-10. (Compl. (dkt. # 1) at
2 ¶¶ 10-21.) Plaintiffs allege Defendants, using six Amazon Selling Accounts, acted in concert to
3 sell counterfeit Prevagen-branded dietary supplements. (*Id.* at ¶¶ 1, 10.) On February 8, 2024,
4 Plaintiffs filed the instant motion, and on February 9, 2024, the Honorable Jamal N. Whitehead
5 referred “all issues related to service of Defendants” to the undersigned pursuant to General
6 Order 03-23 (Mar. 7, 2023). (Dkt. ## 10-13.)

7 III. DISCUSSION

8 A. Legal Standard

9 Federal Rule of Civil Procedure 26(d) bars parties from seeking “discovery from any
10 source before the parties have conferred as required by Rule 26(f), except in a proceeding
11 exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by
12 stipulation, or by court order.” Fed. R. Civ. P. 26(d)(1). In determining whether to permit
13 expedited discovery, courts in this jurisdiction require the moving party demonstrate that “good
14 cause” exists to deviate from the standard pretrial schedule. *See Amazon.com, Inc. v. Yong*, 2021
15 WL 1237863, at *1 (W.D. Wash. Apr. 2, 2021) (adopting the “good cause” standard for motions
16 for expedited discovery and finding that plaintiffs demonstrated good cause for expedited
17 discovery); *see also Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 276 (N.D. Cal.
18 2002) (applying “the conventional standard of good cause in evaluating Plaintiff’s request for
19 expedited discovery”).

20 “Good cause may be found where the need for expedited discovery, in consideration of
21 the administration of justice, outweighs the prejudice to the responding party.” *Semitool*, 208
22 F.R.D. at 276. The Ninth Circuit has emphasized that diligence and the intent of the moving
23

1 party are the focus of the inquiry into good cause. *Johnson v. Mammoth Recreations, Inc.*, 975
2 F.2d 604, 609 (9th Cir. 1992).

3 **B. Plaintiffs' Efforts**

4 Defendants provided United States business addresses when registering the Amazon
5 Selling Accounts, but Plaintiffs determined the addresses were nonexistent or unaffiliated with
6 Defendants. (Garrett Decl. (dkt. # 11) at ¶ 6; Commerson Decl. (dkt. # 12) at ¶¶ 5-6.) In addition
7 to investigating the information Defendants provided, Plaintiffs attempted to locate Defendants
8 by working with private investigators, searching public records and specialized investigative
9 databases, and seeking informal discovery from third-party financial institutions connected with
10 Defendants. (Commerson Decl. at ¶ 5.) Despite extensive investigative efforts, Plaintiffs have
11 been unable to locate Defendants. (*Id.*)

12 Five of the six Amazon Selling Accounts were registered with bank accounts from
13 Choice Financial Group, and one was registered with a bank account from Fifth Third Bank,
14 N.A. (Garrett Decl. at ¶¶ 9-10.) These bank accounts were used to transfer funds to and from the
15 Amazon Selling Accounts. (*Id.*) Plaintiffs now seek leave to serve Rule 45 document subpoenas
16 on Choice Financial Group and Fifth Third Bank, N.A. for information enabling Plaintiffs to
17 locate and serve Defendants. (Pls.' Mot. at 7.)

18 **C. Good Cause for Expedited Discovery**

19 The Court notes that Defendants appear to have actively misled Plaintiffs as to their
20 locations. The Court finds that Defendants should not be afforded the benefit of concealment in
21 furtherance of their alleged counterfeiting scheme. Plaintiffs have shown diligence in utilizing
22 available means to investigate Defendants' locations.

1 Having considered the balance of factors, the Court concludes that Plaintiffs’ intent in
2 seeking expedited discovery justifies their request. Courts routinely allow early discovery for the
3 limited purpose of identifying and locating defendants on whom process could not otherwise be
4 served. *See, e.g., Music Grp. Macao Commercial Offshore Ltd. v. John Does I-IX*, 2014 WL
5 11010724, at *1-2 (W.D. Wash. July 18, 2014) (granting expedited discovery sufficient to
6 identify Doe defendants); *Digital Sin, Inc. v. Does I–5698*, 2011 WL 5362068, at *2 (N.D. Cal.
7 Nov. 4, 2011) (allowing early discovery where plaintiff “identified the Doe defendants with
8 sufficient specificity”; “described the steps it took to locate and identify the Doe defendants”;
9 pled the essential elements to state a claim; and sought “information likely to lead to identifying
10 information that will allow it to effect service of process”); *Facebook, Inc. v. Various, Inc.*, 2011
11 WL 2437433, at *3 (N.D. Cal. June 17, 2011) (“Courts in [the Ninth] Circuit permit expedited
12 discovery to identify unknown defendants usually when the plaintiff simultaneously can identify
13 no defendants and legitimately fears that information leading to their whereabouts faces
14 imminent destruction.”); *see also Cottrell v. Unknown Corr. Officers, 1-10*, 230 F.3d 1366, *1
15 (9th Cir. Aug. 18, 2000) (explaining that “[t]he Federal Rules of Civil Procedure do not require
16 that a district court dismiss unknown defendants simply because the plaintiff is unaware of the
17 identity of those defendants at the time of the filing of the complaint.”).

18 Here, Plaintiffs seek expedited discovery to ascertain sufficient information to locate
19 Defendants and effect service. Good cause exists where a plaintiff has exhausted its means to
20 locate the defendant through publicly available information and has no other way to locate and
21 serve those involved in the scheme. *Amazon.com Inc. v. Kitsenka*, 2023 WL 3902911, at *3
22 (W.D. Wash. May 22, 2023) (granting expedited discovery for the limited “purpose of obtaining
23 information that may reveal Defendants’ identities and locations.”); *see also Semitool*, 208

1 F.R.D. at 277 (granting expedited discovery where narrowly tailored requests will “substantially
2 contribute to moving this case forward”). Having reviewed Plaintiffs’ declarations, it appears
3 they have exhausted available means to locate Defendants. (*See* Garrett Decl. at ¶¶ 6-7;
4 Commerson Decl. at ¶¶ 5-6.) Consequently, Plaintiffs have demonstrated that without expedited
5 discovery, they will not be able to locate those responsible for the alleged fraud.

6 Furthermore, the Court finds good cause for expedited discovery given Plaintiffs’ claims
7 that irreparable harm will result through Defendants’ continued use of their trademarks, unfair
8 competition, and false advertising (Compl. at ¶¶ 60, 68, 75, 81, 88). *See Music Grp. Macao*,
9 2014 WL 11010724 at *2 (finding good cause where plaintiffs alleged irreparable harm through
10 infringement and unfair competition); *see also Qwest Comm. Int’l, Inc. v. WorldQuest Networks*,
11 *Inc.*, 213 F.R.D. 418, 419 (D. Colo. 2003) (“The good cause standard may be satisfied . . . where
12 the moving party has asserted claims of infringement and unfair competition.”). For these
13 reasons, Plaintiffs’ intent in seeking expedited discovery supports a finding of good cause.

14 Finally, the Court finds minimal prejudice to Defendants if Plaintiffs are granted leave to
15 conduct expedited discovery. Plaintiffs’ discovery request is narrowly tailored to seek
16 information only from the bank accounts associated with Defendants’ Amazon Selling Accounts.
17 (*See* Pls.’ Mot. at 7.) Furthermore, Plaintiffs have requested discovery directed at a non-party—
18 not Defendants—which courts recognize as “not imposing a significant burden upon
19 defendants.” *Yong*, 2021 WL 1237863 at *3.

20 The Court finds the discovery Plaintiffs seek is narrowly tailored to obtain information
21 related only to the purpose of identifying individuals responsible for the alleged fraud and their
22 locations. *See Qwest Commc’ns Int’l, Inc.*, 213 F.R.D. at 420 (“In applying the ‘good cause’
23

1 standard under Rule 26(d), the court should consider the scope of the requested discovery.”).

2 Accordingly, the Court grants Plaintiffs’ Motion.

3 **IV. CONCLUSION**

4 For the foregoing reasons, the Court ORDERS:

5 (1) Plaintiffs’ Motion (dkt. # 10) is GRANTED. Plaintiffs are granted leave, prior to

6 the Rule 26(f) conference, to serve Rule 45 subpoenas on Choice Financial Group and Fifth

7 Third Bank, N.A. for the purpose of obtaining information to identify Defendants’ locations.

8 Plaintiffs shall provide a copy of this Order with each subpoena issued thereto.

9 (2) Plaintiffs are ORDERED to file proof of service or move for alternative service

10 within 120 days of the date this Order is signed.

11 The Clerk is directed to send copies of this Order to the parties and to Judge Whitehead.

12 Dated this 27th day of February, 2024.

13 

14 MICHELLE L. PETERSON
15 United States Magistrate Judge

16

17

18

19

20

21

22

23